

117191

**DECISION**



20424/ Lieberman

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-204051

DATE: December 29, 1981

MATTER OF: Coastal Utilities, Inc.

**DIGEST:**

Protest filed in GAO is dismissed where material issues protested are before a court of competent jurisdiction, the plaintiff has not requested judicial relief pending GAO decision, and the court has not indicated interest in GAO decision.

Coastal Utilities, Inc. (Coastal), protests the alleged failure of the Department of the Army (Army) to evaluate properly an unsolicited proposal, for the lease of certain communication equipment, which Coastal submitted to the Army Corps of Engineers. In particular, Coastal alleges that the Army failed to conduct a proper cost comparison as required by Office of Management and Budget Circular No. A-76 (A-76) prior to its determination to purchase the equipment as part of a contract to construct a health facility. Coastal requests that the Army be required to perform the requisite cost analysis to determine whether it is more appropriate to accept Coastal's allegedly more economical proposal.

Because of our discussion below, we need not address the agency's assertions that GAO should not consider the protest on jurisdictional grounds.

Subsequent to protesting to our Office, Coastal filed suit against the Government in the United States District Court for the Southern District of Georgia (Civil Action No. CV481-453). The bases for this suit are essentially the same as those presented to our Office in the protest.

It is the policy of our Office not to decide protests where the material issues are pending before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our decision.

4 C.F.R. § 21.10 (1981). Coastal has not requested judicial relief pending a decision by our Office, and the District Court has not expressed any interest in our decision.

Coastal asserts that, while the relief sought in District Court is similar to the relief sought from our Office, the causes of action asserted and the issues are dissimilar. Coastal points out that the court action focuses on the Army's alleged "breach of promise" to consider the Coastal proposal and award to Coastal if its proposal proved more cost effective than the present arrangement, while the bid protest is concerned with the Army's failure to perform a comparative cost analysis as required by A-76. However, our review of the pleadings discloses that Coastal has recited essentially the same issues before the court that it has raised in its protest. Coastal has also requested essentially the same relief, namely the conduct by the Army of a proper comparative cost analysis of its proposal, to which it believes it is entitled under the A-76 requirements.

In any event, even if the identical issues have not been raised before the court, the issues raised are clearly intertwined with the issues raised here, as is the relief sought; the court would necessarily consider the same matters as are before our Office. Under such circumstances, we will not consider the protest. Dyneteria, Inc; Jets, Inc., B-194279, B-194284, August 1, 1979, 79-2 CPD 70.

We dismiss the protest.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel